IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 134 of 1998.

Decided on : 29.3.2007.

B.D.Vij **…..Appellant.**

VERSUS

Vijay Kumar & ors. **…..Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. Bhupender Gupta, Senior Advocate with Mr. Janesh Gupta, Advocate.**

For the Respondents : **Dr. Lalit Sharma, Advocate, for respondents No. 1 & 6.**
Ms. Sunita Sharma, Advocate, for respondent No.4.
Mr. B.M.Chauhan, Advocate, for respondent No.5.

Surjit Singh, Judge (Oral)

This appeal by the owner of truck No. HIS-890 is directed against the award of the Motor Accident Claims Tribunal, whereby a sum of Rs. 4,75,725.95P has been awarded by way of compensation in favour of respondent No.1 Vijay Kumar for the injuries sustained by him in an accident of the said truck and scooter No. HIS-6189 and the entire amount of compensation has been ordered to be paid by the owner of the truck with the finding that the accident took place due to rash or negligent driving on the part of the driver of the truck and that the driver of the truck did not possess a

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

valid and effective driving licence and hence the insurer is not liable to pay compensation. The finding as to the quantum of compensation especially the calculations with regard to the compensation awarded under the sub-head “future loss of earnings” has also been assailed.

2. Relevant facts may be summoned up thus. Respondent Vijay Kumar was riding the pillion of scooter No. HIS 6189, owned by respondent No.3 Rajinder Singh and driven by respondent No. 2 Sanjay Kumar, when truck No. HIS 890 owned by the appellant and driven by respondent No.4 Tota Ram came from behind and a fan like object fitted to the silencer to the truck hit the scooter, as a result of which claimant- respondent No.1 Vijay Kumar sustained multiple fractures of right leg, which had to be ultimately amputated to save his life. The injuries resulted in 75% permanent disability. The petition was filed for award of compensation, under Section 166 of the Motor Vehicles Act by respondent Vijay Kumar, in which the owners, the drivers of the two vehicles and the insurers of both the vehicles were impleaded as respondents. Truck was insured with respondent No.5, New India Assurance Company, while the scooter was insured with United India Assurance for third party risk at the relevant time.

3. Respondent No.5, the New India Assurance Company took the plea that respondent Tota Ram, who was driving the truck did not possess a valid and effective driving licence and hence it was not liable to pay any compensation, as it was a case of breach of condition of insurance policy. Appellant denied that his truck hit the scooter.

4. The Tribunal after recording the evidence led by the parties came to the conclusion that accident took place due to rash or negligent driving of the truck by respondent Tota Ram, and the owner and the driver of the truck were liable to pay the compensation. Insurance company was held to be not liable as respondent Tota Ram did not possess a driving licence to drive a truck or a heavy goods vehicle, but possessed the licence to drive a road roller.

5. Appellant was permitted to lead additional evidence in support of his plea that Tota Ram respondent possesses a valid and effective driving licence. Two witnesses were examined by way of additional evidence. They are AW 1 Hans Raj, a Clerk in the office of Licencing Authority (Urban), Shimla and AW 2 Tota Ram. AW 1 Hans Raj stated that Tota Ram, respondent present in the court whose photograph was affixed in the register brought by him had been issued a licence to drive a light motor vehicle on 31.3.1993, which was valid up to 30.3.1998 and that on 29.4.1994, an endorsement was made on that licence authorizing the holder to drive heavy goods vehicle. AW 2 Tota Ram respondent stated that he had applied for a licence in the year 1993 to the Licencing Authority (Urban), Shimla and that initially in the year 1993, licence for light motor vehicle was issued in his favour and later on in the year 1994 he was authorized to drive heavy goods vehicle also. No evidence in rebuttal was led. There is no reason for disbelieving the testimony of these two witnesses, particularly AW 1 Hans Raj, Clerk from the office of Licencing Authority (Urban), Shimla, who appeared with the relevant register, in which a photograph of respondent Tota Ram was

found pasted. In view of this evidence, the finding of the Tribunal that Tota Ram did not possess a valid driving licence to drive heavy goods vehicle is set-aside. The effect of this finding is that there is no breach of the condition of the insurance policy with regard to the person(s) entitled to drive the vehicle and hence the insurance company, i.e. respondent No.5, New India Assurance Company, is liable to satisfy the award, by way of indemnification of the appellant on account of insurance agreement between the two.

6. The next submission made by the learned counsel for the appellant is with regard to the quantum of compensation. He stated that the Tribunal, vide para-25 of its award, returned the finding that the income of the claimant was Rs. 2500/- per month, but while calculating the compensation on account of annual loss of future earnings the figure has been taken to be Rs.40,000/- instead of Rs.30,000/- in para-26. It is true that compensation on account of future loss of earnings has been miscalculated and an amount of Rs.4,48,000/- has been awarded on account of future loss of earnings, even though the figure works out at Rs. 3,36,000/-, but the compensation awarded by the Tribunal on account of pain and suffering is just Rs.10,000/-, even though one of the legs of the claimant has been amputated. Also, nothing has been awarded on account of loss of comforts and amenities of life. Further nothing has been awarded on account of diminution of marriage prospects of the claimant due to amputation of one of his legs. It may be stated that the claimant was just 22 years of age when the accident took place and was unmarried.

7. In view of the above stated position, the total amount of compensation awarded by the Tribunal, i.e. Rs. 4,75,725.95 cannot be said to be on the higher side. Hence the plea for reducing the quantum of compensation is rejected.

8. Also, it has been submitted though half heartedly that there is no evidence that the accident took place due to negligence on the part of the driver of the truck. The claimant examined himself and one Kishori Lal PW 4 and both of them stated quite categorically that the accident took place because a fan like object fitted on the silencer on the truck and extending outside the body of the truck hit the scooter while overtaking it and as a result of that the claimant fell and sustained injuries. No evidence was led by the appellant to rebut this evidence of the respondent- claimant. Hence, the contention that the finding of the Tribunal that the accident took place because of the rash or negligent driving of the truck is unwarranted and not justified by the evidence on record, is also rejected.

9. As a result of the above discussion and the observation and findings, appeal is partly accepted and the award of the Tribunal is modified to the extent that not only the appellant and the driver of the truck but also the insurer, i.e. respondent No.5 New India Assurance Company, are liable to satisfy the award jointly and severally.

10. Appeal stands disposed of accordingly.

March 29, 2007. **(Surjit Singh)**
(*Hem*) **Judge.**